

OCT 26 2006

Atty Docket No. 022128-000130US

PTO FAX NO.: 1-571-273-8300 and 1-571-273-4770

ATTENTION: Examiner Peffley, Michael F

Group Art Unit 3739

**OFFICIAL COMMUNICATION  
FOR THE PERSONAL ATTENTION OF  
EXAMINER Peffley, Michael F**

**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that the following documents in re Application of WILLIAM MALECKI et al., Application No. 10/787,532, filed February 25, 2004 for ENERGY BASED DEVICES AND METHODS FOR TREATMENT OF PATENT FORAMEN OVALE are being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Documents Attached

1. Communication dated October 26, 2006 w/Terminal Disclaimer attachment (3) pages.

Number of pages being transmitted, including this page: 4

Dated: October 26, 2006

  
JoAnn Evangelista

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PATENT  
Docket No.: 022128-000130US

TOWNSEND and TOWNSEND and CREW LLP

By:

JoAnn Evangelista

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

WILLIAM MALECKI et al.

Application No.: 10/787,532

Filed: February 25, 2004

For: ENERGY BASED DEVICES  
AND METHODS FOR  
TREATMENT OF PATENT  
FORAMEN OVALE

Confirmation No.: 1226

Examiner: Peffley, Michael F

Art Unit: 3739

COMMUNICATION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

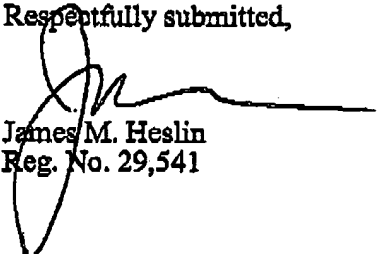
Applicants thank Examiner Peffley for the courteous and helpful in-person interview on October 24, 2006, attended by Jonathan Feuchtwang and Angela Macfarlane, as representatives of the assignee, and James Heslin, as attorney-of-record. Applicants explained where support for the material added by amendment was found in the provisional application. Applicants also agreed to resend a copy of the Terminal Disclaimer disclaiming the various co-pending applications. In addition, Applicants discussed co-pending applications having similar subject matter and overlapping filing dates.

WILLIAM MALECKI et al.  
Application No.: 10/787,532  
Page 2

PATENT

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
James M. Heslin  
Reg. No. 29,541

Attachment: *Terminal Disclaimer*

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PTO/SB/25 (08-04)

**TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL DOUBLE PATENTING  
REJECTION OVER A PENDING SECOND APPLICATION**Docket Number (Optional)  
022128-000130US

In re Application of: MALECKI, WILLIAM et al.

Application No.: 10/10/787,532

Filed: February 25, 2004

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For: ENERGY BASED DEVICES AND METHODS FOR TREATMENT OF PATENT FORAMEN OVALE

The owner, Clarra, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending Application Numbers 10/865,974, filed on September 18, 2003; 10/811,228, filed on March 28, 2004; 10/873,348, filed on June 21, 2004; 11/053,274, filed on February 7, 2005; 11/249,568, filed on October 12, 2005; as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such patent granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 29,541

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
James M. Heslin  
Typed or printed name

\_\_\_\_\_  
October 18, 2006  
Date

\_\_\_\_\_  
(850) 326-2400  
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
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